a valid contract of insurance could be made against the effects of a mere judicial decision. Such a contract would be a mere wager on the outcome of a court's deliberations. Viewed in this light, neither "risk" to be established under the facts of the instant case would be sufficient to constitute a consideration to obligate the defendant to pay the premium sought to be recovered. It is true that the liability of the defendant might possibly be argued for under the views expressed in *Gelpcke* v. *Dubuque,* 1 Wall. 175, that the validity and obligation of a contract valid by the law of the state as expounded and administered when the contract is made, cannot be impaired by any subsequent judicial decision declaring such statute unconstitutional. By extreme application, it might be said that under this doctrine a *possibility* of liability did exist within the continuance of the policy. The more logical ground, however, on which to support the conclusion of the defendant's liability is that one incidentally referred to by the court at the end of the decision, i. e., that the defendant should be liable by the very terms of the agreement, the provision being attached that earned premiums should "be retained by the company regardless of the construction which might be given by the courts to the law referred to."

JUDGMENT—RES ADJUDICATA.—The plaintiff, as administrator of the estate of one Sarah A. Murphy, brought a statutory action in tort for her death, alleged to have been caused by the negligence of the defendant. Previously a common-law action had been brought by the deceased during her life to recover damages for conscious suffering arising from the same injury, and after her death the plaintiff had prosecuted the suit to a judgment in his favor. *Held,* that the plaintiff for the purposes of the law of res adjudicata was not the same person in each action. *McCarthy* v. *William H. Wood Lumber Company,* (Mass., 1914), 107 N. E. 438.

This holding is in accord with the decided trend of judicial opinion. The suit of the administrator in the principal case and that previously prosecuted by him rested upon two separate and distinct causes of action. One was common-law, the other statutory; one arose before death in favor of either the intestate or the administrator, the other after death in favor of the administrator only; one was for compensatory damages to be held as assets of the estate, the other for a penalty to be given as a gratuity to the next of kin. See *Boott Mills* v. *Boston & Maine Railroad,* 208 Mass. 582, 106 N. E. 680, and cases there cited. The parties also were different. In an action by an administrator for the conscious suffering of the intestate, the plaintiff stands in the shoes of the deceased, represents the estate, and takes the cause of action as a survival from the intestate. In a statutory action by an administrator for the death of the intestate, the plaintiff stands merely as a convenient instrumentality for the collection of a fine, represents the next of kin, and takes the cause of action as an obligation arising upon the death of the intestate. The identities of the plaintiffs and of the two causes of actions under discussion are clearly shown when the action for death is brought by a public officer for the benefit of the next of kin. *Old Dominion*

Copper Mining & Smelting Co. v. *Bigelow,* 203 Mass. 159, 211, 89 N. E. 193, 40 L. R. A. (N. S.) 314. For authorities sustaining the distinction see *Brennan* v. *Standard Oil Co.,* 187 Mass. 376, 73 N. E. 472; *Corbett* v. *Boston & Maine Railroad,* 107 N. E. 60. The same distinction is made under the federal Employers' Liability Act (Act Apr. 22, 1908, § 149, 35 St. 65—U. S. Comp. Stat. 1913, §§ 8657-8665) in holding that there is not identity of parties for the purposes of the law of res adjudicata between the administrator of the estate of a deceased employee and his widow and children as the sole beneficiaries under that law. *Troxell* v. *Delaware, Lackawanna & West. R. R.,* 227 U. S. 434, 442, 33 Sup. Ct. 274, 57 L. Ed. 586. See also *Amer. R. R.* v. *Birch,* 224 U. S. 547, 32 Sup. Ct. 603, 56 L. Ed. 879; *Winfree* v. *Northern Pacific Ry.,* 227 U. S. 296, 33 Sup. Ct. 273, 57 L. Ed. 518. A person in one capacity is not bound by a previous judgment or admission in another capacity. *Leggott* v. *Great Northern Ry.,* 1 Q. B. D. 599; *Daly* v. *Dublin, Wicklow & Wexford Ry.,* 30 L. R. Ireland 514; *Frost* v. *Thompson,* 106 N. E. 1009. See also *Bradshaw* v. *Lancashire & Yorkshire Ry.,* L. R. 10 C. P. 189; *Duchess of Kingston's Case,* 2 Smith's Lead. Cas. (9th ed.) 844. The court held also that there is no estoppel by privity between the administrator in the one capacity and in the other, because here there is no known or recognized privity either in estate, in blood, in representation, in law, or "in mutual or successive relationships to the same rights of property." *Old Dominion Copper Mining & Smelting Company* v. *Bigelow,* 203 Mass. 159, 218, 89 N. E. 193, 40 L. R. A. (N. S.) 314. "Merely because persons in two different capacities are interested in proving or disproving the same facts does not necessarily make them privies." *Duffee* v. *Boston Elev. Ry.,* 191 Mass. 563, 564. The reasoning above to establish that there are two distinct causes of action, that the parties in the two cases are different, and that there is no privity between the administrator in the one capacity and in the other is the reasoning of the court in the principal case, and seems to be sound.

MARRIAGE—FRAUD AS GROUND FOR ANNULMENT.—Prior to his marriage to the plaintiff, defendant was treated for tuberculosis. He falsely represented to the plaintiff that certain symptoms which he displayed were manifestations of a cold. A few days after marriage, a physician diagnosed his case as tuberculosis. Plaintiff ceased to cohabit with him and now seeks annulment of the marriage on the ground of fraud. *Held,* that the fraud went to the essence of the contract of marriage, and annullment should be decreed. *Sobol* v. *Sobol,* (N. Y. 1914), 150 N. Y. S. 248.

A greater measure of fraud is required to justify annulling marriage than would be necessary to avoid an ordinary contract, because the marriage relation is a status controlled and regulated by considerations of public policy, which are paramount to the rights of the parties. *Wier* v. *Still,* 31 Ia. 107; *Smith* v. *Smith,* 171 Mass. 404. Fraudulent misrepresentation of one party as to birth, social position, fortune and good health cannot vitiate the contract. *Reynolds* v. *Reynolds,* 3 Allen 605; 1 BISHOP, MAR. & DIV., (5th ed.) § 167. Concealment of the fact that the woman had prior to the marriage